<div align="center">**REMARKS**</div>

Reconsideration and allowance of the claims are requested in view of the above amendments and the following remarks. Claims 1, 5, 11, 12 and 48 have been amended. Support for the amendments may be found in the specification and claims as originally filed. For example, support for the amendments to the claims may be found in the specification at least at page 9, lines 2-4 and page 15, lines 24-25. No new matter has been added. Claims 15, 17 and 25 were previously canceled.

Upon entry of this amendment, claims 1-14, 16, 18-24 and 26-52 will be pending in the present application, with claims 1, 11, 12 and 13 being independent.

1.   **Rejections Under 35 U.S.C. §103**

A.   **Obviousness in View of Haitsuka and Chiu**

The Office Action rejects claims 1-2, 5-8, 10 and 12 under 35 U.S.C. §103(a) as being unpatentable over Haitsuka et al. (U.S. Patent 6,505,201) in view of Chiu et al. (U.S. Patent 6,701,363). Applicants respectfully traverse this rejection for at least the following reasons.

Haitsuka discloses an apparatus for monitoring individual Internet usage, particularly for the purpose of targeting advertisements to the user (see abstract). A client monitoring application monitors (1) URLs entered into the browser's address bar, (2) the stream of URLs transmitted by the browser, or (3) information in displayed web pages (see abstract; col. 8, lines 22-29). As such, the Haitsuka reference is directed almost solely to learning where the user is surfing and selecting appropriate advertisements to direct to the user based on his or her surfing patterns. Other monitored information disclosed in Haitsuka includes geographic data (i.e., the user's location) and personal profile information (i.e., age, sex, marriage status, home address, and personal interests (see col. 6, lines 1-12). Importantly, Haitsuka makes no disclosure or suggestion of monitoring to obtain performance data of a data access system.

Haitsuka also discloses that information regarding a user's use of local device 100 is preferably summarized and classified into multiple demographic profiles (see col. 6, lines 26-27). The information about the user may include geographic data, personal profile information, email and web usage, advertisement click-throughs, and other forms of user interaction and feedback (see col. 6, lines 1-3 and 13-15). Additionally, Haitsuka discloses that a user's activities on a web server may be captured by a client monitoring application, analyzed by a monitoring server and stored in a data store (see col. 6, lines 21-24). However, Haitsuka fails to disclose or suggest a preliminary summarizing step followed by a separate summarizing step. As discussed in the specification of the present application, in embodiments of the present application there is value in utilizing preliminary page summary data (e.g., see page 17, line 18 – page 18, line 1). Furthermore, Haitsuka fails to disclose or suggest an agent residing on a first user site that is adapted to create preliminary summary data of performance data, including summaries of individual web page object retrievals from a remote site.

In contrast to Haitsuka, amended claim 1 includes the elements of creating preliminary summary data of monitored performance data; transmitting data indicative of the preliminary summary data from the monitoring agent; receiving the data indicative of the preliminary summary data transmitted from the monitoring agent; collecting a quantity of the data received; and summarizing the quantity of the data collected to produce summarized performance data. Additionally, in contrast to Haitsuka, amended claim 12 includes the elements of an agent in communication with a client and residing on a first user site, the agent being adapted to create preliminary summary data of performance data, wherein the preliminary summary data includes summaries of at least individual web page object retrievals from at least one remote site. As discussed above, Haitsuka fails to disclose or suggest these elements.

Chiu fails to cure these defects in Haitsuka. Chiu discloses a method of relating characteristics gleaned by monitoring application transaction flows to produce performance metrics useful to characterize the efficiency and performance of web transactions used in a web-

based application (see abstract). However, Chiu fails to disclose or suggest the elements of creating preliminary summary data of monitored performance data; transmitting data indicative of the preliminary summary data from the monitoring agent; receiving the data indicative of the preliminary summary data transmitted from the monitoring agent; collecting a quantity of the data received; and summarizing the quantity of the data collected to produce summarized performance data, as included in amended claim 1. Additionally, Chiu fails to disclose or suggest the elements of an agent in communication with a client and residing on a first user site, the agent being adapted to create preliminary summary data of performance data, wherein the preliminary summary data includes summaries of at least individual web page object retrievals from at least one remote site, as included in amended claim 12. Therefore, since Haitsuka and Chiu, alone or in combination, fail to disclose or suggest all of the elements of claims 1 and 12, these claims are allowable.

Claims 2, 5-8 and 10 depend from claim 1. As discussed above, claim 1 is allowable. For at least this reason, and the additional features recited therein, claims 2, 5-8 and 10 are also allowable.

For at least the reasons above, reconsideration and withdrawal of the rejection of claims 1-2, 5-8, 10 and 12 under 35 U.S.C. §103(a) are respectfully requested.

B.   Obviousness in View of Haitsuka, Chiu and Liu

The Office Action rejects claims 3-4, 9 and 11 under 35 U.S.C. §103(a) as being unpatentable over Haitsuka and Chiu in view of Liu et al. (U.S. Patent 6,839,680). Applicants respectfully traverse this rejection for at least the following reasons.

As discussed above, Haitsuka and Chiu, alone or in combination, fail to disclose or suggest all of the elements of claim 1. Liu fails to cure this defect in Haitsuka and Chiu. Liu discloses a system that tracks user activity across multiple domains, and from such activity develops a time based model that describes the user's interests over time (see col. 2, lines 14-18).

However, Liu fails to disclose or suggest the elements of <u>creating preliminary summary data</u> of monitored performance data; transmitting data indicative of the preliminary summary data from the monitoring agent; receiving the data indicative of the preliminary summary data transmitted from the monitoring agent; collecting a quantity of the data received; and <u>summarizing the quantity of the data collected</u> to produce summarized performance data, as included in amended claim 1. Therefore, since Haitsuka, Chiu and Liu, alone or in combination, fail to disclose or suggest all of the elements of claim 1, this claim is allowable.

Claims 3-4 and 9 depend from claim 1. For at least this reason, and the additional features recited therein, claims 3-4 and 9 are also allowable.

Furthermore, the Office Action on page 7 rejects claim 11 for the same reasons set forth with respect to claim 1. Claim 11 has been amended to include elements similar to those of claim 1 that distinguish over Haitsuka, Chiu and Liu. Therefore, for the reasons discussed above with respect to claim 1, Haitsuka, Chiu and Liu, alone or in combination, fail to disclose or suggest all of the elements of claim 11. As a result, claim 11 is allowable.

For at least the reasons above, reconsideration and withdrawal of the rejection of claims 3-4, 9 and 11 under 35 U.S.C. §103(a) are respectfully requested.

C. Obviousness in View of Reps and Killian

The Office Action rejects claims 13-14, 16, 18-24 and 26-52 under 35 U.S.C. §103(a) as being unpatentable over Reps et al. (U.S. Patent 6,070,190) in view of Killian (U.S. Patent 6,438,592). Applicants respectfully traverse this rejection for at least the following reasons.

Reps discloses monitoring information relating to the performance of a <u>server</u> application program via an application probe. The monitored application programs are executing on a server and the application performance information is sent to a client computer for display and storage (see abstract).

Claim 13 recites in part "a data gathering module that is adapted to collect performance

data of data transfer operations ..., the performance data including at least <u>communication data indicative of network performance statistics</u> for data transfers and <u>application data indicative of performance statistics of the network browser</u>, the performance data being associated with individual web page object retrievals". The Office Action asserts that Reps discloses a client application including such a data gathering module, presumably the AMA probe of Reps.

However, Reps is clearly devoted to monitoring <u>server</u> application performance and completely fails to disclose or suggest the gathering of performance data including network performance statistics for data transfers or application performance statistics of a network browser. Even the sections cited by the Office Action, which at best disclose the interaction between a client and a server and the monitoring of <u>server</u> application performance, fail to disclose or suggest gathering the two types of performance data recited in claim 13.

The Office Action appears to suggest that the AMA probe of Reps represents a data gathering module, yet even the AMA probe (cited by the Office) is only disclosed as gathering real-time information about a client-server based application program 203 - <u>a program that is strictly executing on the server 202</u>. Accordingly, Reps cannot be held to disclose or suggest collection of performance data of a network browser disposed on a user site, as <u>Reps only discloses monitoring server applications</u>. Likewise, Reps fails to disclose gathering performance data including communication data indicative of network performance statistics for data transfers. No such performance data pertaining to data transfers are disclosed or suggested in Reps because Reps is devoted to monitoring <u>server application performance</u> from a client, not to monitoring network performance of a data transfer.

The Office Action on page 16 asserts that Reps explicitly discloses application performance statistics of the network browser (citing col. 14, lines 10-61). Applicants disagree with this reading of Reps.

Reps discloses a timer mechanism 307 that places a time signature on an initial service request 210 from an AMA probe 201 at a client computer, and another time signature on a

service response 211 from a server computer back to the AMA probe 201, and that records the difference between the two time signatures in a transaction record (see col. 14, lines 10-18). The timer mechanism disclosed in Reps measures the total duration of a transaction cycle beginning with a request from the AMA probe to a server computer having an application program 203, and ending at a response to the request received by the AMA probe from the application program 203 on the server computer (see col. 9, lines 59-67; col. 14, lines 6-7; FIG. 2). Therefore, the timer mechanism measures the response time of the application program 203, which is strictly executing on the server computer 202. Consequently, the sections cited by the Office Action in Reps refer to monitoring of <u>server application performance, and not application performance statistics of a network browser disposed on a user site</u>, as included in claim 13.

Therefore, applicants respectfully assert that Reps fails to disclose or suggest a data gathering module in a client application that collects communications data indicative of network performance statistics for data transfers and application data indicative of performance statistics of the network browser.

Applicants also assert that Reps fails to disclose or suggest the client application comprising an agent adapted to create preliminary summary data from at least the performance data <u>for transmission to at least one server from the client application</u>, as recited in claim 13. The Office Action points to "servers 104, fig. 1; col. 5, lines 38-42; col. 6, lines 1-5; col. 6, lines 19-31)" as purportedly disclosing the recited "agent" of claim 13. However, these sections of Reps merely describe a client application that generates and stores records about server application performance – there is no disclose or suggestion of summary data, particularly relating to the specific network browser and data transfer performance data recited in claim 13. Furthermore, as Reps is devoted to monitoring server application performance <u>from a client</u>, Reps fails to disclose or suggest creating preliminary summary data for transmission to at least one server from a client application.

Therefore, applicants respectfully assert that Reps fails to disclose or suggest an agent

that is adapted to create preliminary summary data from at least the performance data for transmission to at least one server from the client application, wherein the preliminary summary data includes summaries of at least the individual web page object retrievals from the at least one remote site

The Office Action admits that Reps fails to disclose capturing performance data associated with web page object retrievals. Accordingly, the Office Action points to Killian as purportedly disclosing this recited feature. Killian discloses a server transmitting "performance monitoring instructions which instructs the client computer to send to the server a performance message indicating the length of time required on the client for performancing (sic) an act associated with one or more of the transmitted data objects" (see col. 3, lines 36-40). However, claim 13 recites "wherein the preliminary summary data includes <u>summaries</u> of at least the individual web page object retrievals from the at least one remote site". Neither Reps nor Killian disclose <u>summaries</u> relating to individual web page object retrievals – no summarizing of such performance data is even suggested. Furthermore, Killian does not disclose or suggest the other recited features missing from Reps.

Accordingly, applicants respectfully assert that Reps and Killian, alone or in combination, fail to disclose or suggest all of the elements of claim 13. Therefore, allowance of claim 13 is requested.

Claims 14, 16, 18-24, 26-50 and 52 depend from claim 13. As discussed above, claim 13 is allowable. For at least this reason, and the additional features recited therein, claims 14, 16, 18-24, 26-50 and 52 are also allowable.

The Office Action rejects claim 51 as being unpatentable over Reps in view of Killian. Claim 51 depends from claim 1 (not claim 13) and, therefore, incorporates the elements of claim 1. However, in rejecting claim 51, the Office Action fails to provide an explanation for how Reps and Killian teach or suggest all of the elements of base claim 1. Applicants respectfully submit that claim 51 is patentably distinct over the prior art and request examination of this claim

in light of its dependency on claim 1.

For at least the reasons above, reconsideration and withdrawal of the rejection of claims 13-14, 16, 18-24 and 26-52 under 35 U.S.C. §103(a) are respectfully requested.
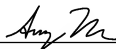
2. **Conclusion**

Accordingly, in view of the above amendment and remarks it is submitted that the claims are patentably distinct over the prior art and that all the rejections to the claims have been overcome. Reconsideration and reexamination of the present application is requested. Based on the foregoing, applicants respectfully request that the pending claims be allowed, and that a timely Notice of Allowance be issued in this case. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the applicants' attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed check please charge any deficiency to Deposit Account No. 50-0463.

Respectfully submitted,

Microsoft Corporation

Date: __11/27/06_____   By: _____

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